record demonstrate that the entry of COMSAT, if allowed to provide domestic communications services via INTELSAT and Inmarsat, would benefit U.S. consumers by increasing the number of competitive service options available. Furthermore, the modest amount of IGO system capacity available -- not to mention the strong competition from incumbent domestic satellite operators -- would prevent COMSAT from exercising market power in the domestic arena, now or in the future. Therefore, COMSAT's entry presents no anticompetitive risks.[41] Opponents have offered *no* facts to the contrary.

To reiterate, the relevant facts are that incumbent fixed satellite providers already occupy the most desirable orbital slots over the United States, collectively provide approximately 550 transponders, and obviously carry nearly all U.S. domestic satellite traffic.[42] The 14.5 INTELSAT transponders that COMSAT likely could bring to the U.S. market would increase available capacity by only about 2.6 percent -- enough to provide some additional service options to U.S. customers, certainly, but far from enough to pose any anticompetitive threat to the market. Similar constraints limit the amount of Inmarsat capacity that might serve the U.S. domestic market.[43] Yet while COMSAT's entry into the marketplace via INTELSAT and Inmarsat would necessarily be limited by technology and spectrum availability, COMSAT nonetheless

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[41] COMSAT Comments at 6, 12-20.

[42] *Id.* at 16-17.

[43] *Id.* at 17-18 (noting limitations on L-band capacity and constraints of Inmarsat system design).

could offer U.S. customers attractive new service options (including convenient "one-stop shopping") and provide immediate competition for the sole geostationary MSS licensee now serving the domestic market, as well as the vast array of terrestrial mobile service providers.[44]

The record contains no data to refute these facts. Rather, the objections lodged against COMSAT's provision of domestic services are tediously familiar.[45] While incumbent service providers give lip service to greater competition in the United States,[46] they find an endless variety of reasons for opposing the regulatory changes necessary to bring about the anticipated benefits associated with COMSAT's entry -- *i.e.*, increased availability of capacity and downward pressure on prices. As discussed in the next section, these objections are without merit.

C. Commenters That Oppose COMSAT's Provision Of Domestic Services Via The INTELSAT And Inmarsat Systems Offer No Credible Evidence In Support Of Their Allegations That Such Entry Would Have Anticompetitive Effects

The only opposition to COMSAT's provision of domestic services using the INTELSAT and Inmarsat systems comes, predictably, from incumbent satellite operators that are anxious to forestall competition. It is unsurprising that licensees of

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[44] *See* COMSAT Comments at 18-20.

[45] *See infra* Section II.C.

[46] *See, e.g.*, Comments of GE Americom at 2 ("strongly supports . . . enhancing competition in the U.S. satellite market").

domsats, geostationary MSS, and LEO systems all oppose the entry of COMSAT, and even urge the Commission to erect still additional barriers to COMSAT's entry.[47] What is striking, however, is the hyperbole of, and utter lack of evidentiary support for, their contentions that such entry by COMSAT would somehow be anticompetitive.

It is impossible, for example, to take seriously the strident assertion by GE Americom that COMSAT could "severely disrupt competition in the United States.[48]" There is simply no rational basis for -- or record evidence for support of -- a belief that COMSAT could pose any real danger to the likes of GE Americom, AT&T, PanAmSat, or any other firm in the market. It is no wonder that COMSAT's opponents conveniently fail to discuss the facts, for how could COMSAT, with less than 15 transponders of INTELSAT capacity available to serve the U.S. domestic market, dominate a competitor such as GE Americom, which boasts that it operates "a fleet of thirteen spacecraft [providing] a full range of telecommunications services to users," holds a controlling interest in the STARSYS "Little LEO" system, and has applied for a nine-satellite constellation at Ka-band to provide both domestic and international service?[49]

Reading the litany of objections to COMSAT's provision of domestic services, one gets the impression that they are done by rote, without serious examination of

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[47] Some even go so far as to urge the Commission to postpone, yet again, the question of COMSAT entry indefinitely. *E.g.*, Orion Comments at 3.

[48] GE Americom Comments at 5.

[49] *Id.* at 2.

either the premises or the current market realities. Typical is Orion's complaint that COMSAT has "treaty-based privileges and immunities and other indirect benefits not available to the other satellite competitors" that should not be "leveraged" into new market areas.[50] These claims of so-called "special advantages" are simply not true; indeed, as shown below, it is the non-common carrier separate systems -- subject to *no* tariff regulation, *no* structural regulation, *no* accounting regulation, *no* foreign ownership regulation, *no* capitalization regulation, and *no* Title II complaint process -- that have the special advantages. Give these realities, there is no principled basis to deprive American consumers of the benefits of service that COMSAT, a U.S. company, could provide using the capacity that it, after all, paid for and owns. COMSAT addresses the major allegations of supposedly unfair "special privileges" below.[51]

Myth: COMSAT[52] *enjoys special "treaty based privileges and immunities."*

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[50] Orion Comments at 15.

[51] AT&T is quite wrong when it characterizes the Report of Special Counsel to the Commission on Reinventing Government as showing that the FCC "recognizes" the IGOs as some impediment. AT&T Comments at 15, n.8. The Commission itself has never come to such a conclusion, and the Report simply does not have the status of an official Commission action.

[52] Orion, unlike other commenters, at least appears to understand that the provider of INTELSAT services in the United States is *COMSAT*, not INTELSAT itself. Orion Comments at 15. The situation with respect to Inmarsat is even more competitive, as the Inmarsat Convention promotes intrasystem competition among earth station operators.

Fact: This canard should be laid to its final rest. COMSAT, in its role as a provider of common carrier services, is not immune from U.S. antitrust laws.[53] COMSAT is also fully subject to U.S. tax laws.[54] Orion nowhere identifies what other "treaty-based privileges and immunities" supposedly give COMSAT a competitive advantage in providing U.S. domestic satellite services.[55]

Myth: COMSAT is immune from "competition regulation."[56]

Fact: This contention is preposterous. No satellite company or interexchange carrier is regulated to as great or as intrusively an extent as COMSAT. Certainly no such regulation applies to Orion, PanAmSat, or Columbia, which are classified as non-common carriers and thus receive no Title II oversight at all.[57] And AMSC, despite the domestic L-band monopoly it seeks to protect, is treated as a nondominant carrier -- in contrast to the dominant carrier regulation to which COMSAT's Inmarsat services

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[53] *See generally Alpha Lyracom Space Comm., Inc. v. Communications Satellite Corp.*, 946 F.2d 168, 170 (2d Cir. 1991), *cert. denied,* 502 U.S. 1096 (1992).

[54] For tax purposes, INTELSAT and Inmarsat are, in effect, treated as cooperatives or partnerships. Taxation occurs not at the cooperative level, but at the investor level, as in any partnership. COMSAT is therefore liable for the payment of U.S. corporate income tax on the income it receives on its INTELSAT and Inmarsat operations.

[55] Furthermore, ICO is a private company and enjoys no governmental immunities.

[56] Orion Comments at 15, n.18 (citing Orion's *DISCO-I* Comments at n.6.)

[57] Because it leases space segment capacity on NASA satellites, Columbia enjoys even greater advantages since U.S. taxpayers cover the construction and launch vehicle costs that, with respect to other systems, are borne by the satellite operators.

are subject. It is thus COMSAT's rivals, not COMSAT, that are protected from "competition regulation" -- and, in the case of AMSC, from any actual competition.

Myth: COMSAT's Signatory role gives it an unfair advantage because it is the "only channel through which U.S. carriers can obtain access" to the INTELSAT and Inmarsat systems.[58]

Fact: COMSAT paid for its ownership stake in the INTELSAT and Inmarsat systems, and seeks only to make efficient use of its property. It is equally true that PanAmSat, Orion, GE Americom, AT&T, and AMSC, among others, each have exclusive access to *their* systems. In fact, COMSAT is subject to a non-discrimination requirement for access to its system; separate satellite systems can lawfully deny access to customers as they deem fit. In addition, since *DISCO-I*, domsat operators such as AT&T may also provide seamless international service.

As for Inmarsat-based services, COMSAT faces competition from AMSC's currently operational system and other Inmarsat Signatories, as well as rival media such as C-band and Ku-band satellite service providers and a host of terrestrial mobile communications services. Moreover, the FCC has awarded licenses to three "Big LEO" mobile ventures, backed by large corporations, and three "Little LEO" systems. Unlike INTELSAT, the Inmarsat system provides for intra-system competition; for example, COMSAT faces intense competition from many other earth station operators in the provision of Inmarsat services.

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[58] *See, e.g.*, AT&T Comments at 14.

Myth: COMSAT's entry would present a risk of cross-subsidization.

Fact: No firm's rates are subject to as close scrutiny as those of COMSAT, and the full array of additional regulations -- requiring detailed cost accounting manuals, structural separation, and prior regulatory approvals to participate in satellite and launch vehicle procurements -- applicable to COMSAT is far more extensive than the regulations applied to any other company.[59] The very purpose of these regulations is to guard, *inter alia*, against unlawful cross-subsidization. Furthermore, competitive pressures in the form of extensively deployed transoceanic cables (in which COMSAT's largest customer, AT&T, has major ownership interests and a strong incentive to steer traffic to its own plant), as well as the vast capacity of the domestic and separate international satellite systems, can be relied upon to prevent COMSAT from offering rates above competitive levels.

Second, COMSAT simply does not have enough capacity to engage in a predation strategy even if regulators and market pressures failed. A predation strategy can succeed only if the predator has sufficient capacity to handle the business remaining after the competitor is driven from the market.[60] The 14.5 transponders that

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[59] The Commission, for example, does not obligate Orion, PanAmSat, AMSC, or AT&T to erect structural separations between their domestic and international operations to help to detect "cross-subsidies" or for any other reason.

[60] *See, e.g., Competitive Carrier Order,* 85 F.C.C. 2d 1 (1980); *International Competitive Carrier Policies*, 102 F.C.C. 2d 812 (1985); *Brook Group Ltd. v. Brown and Williamson Tobacco Co.*, 113 S. Ct. 2578, 2587-98 (1993) (predation claim to be dismissed when defendant lacks adequate excess capacity to absorb market share of competitors and cannot quickly acquire new capacity).

COMSAT could make available would hardly replace a fraction of the 550 transponders of the domsat industry. Besides, those transponders would not evaporate; they would remain in orbit available as a capacity source for potential new entrants.

What the objecting parties must truly fear is that COMSAT's entry might create some additional price competition and give customers more options. While this is a matter of self-interest to the incumbent firms, it is not a matter of the public interest. The public interest is in competition, not barriers to entry.

Myth: Access to the U.S. domestic market could affect competition by allowing COMSAT "to provide service in the U.S. market on routes that are closed to competition from U.S. space stations."[61]

Fact: This makes no sense. Every U.S.-licensed space station can, after *DISCO-I*, serve all U.S. domestic routes. There are no U.S. domestic routes closed to U.S. space station licensees. Indeed, COMSAT is at a competitive disadvantage now because it cannot generally provide service on domestic routes freely served by U.S. licensed providers.

Myth: COMSAT has "preferential access" to orbital slots.

Fact: INTELSAT and Inmarsat have no advantages over private firms in the ITU notification/registration process. Neither organization has the ability to register orbital slots directly with the ITU, but must rely on the action of a notifying

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[61] Comments of TRW Inc., IB Docket No. 96-111, *et al.*, at 7 (filed July 15, 1996) ("TRW Comments").

Administration to perform orbital slot registration on its behalf.[62] There is no reason for the FCC to treat the INTELSAT Advance Publication any differently than it does any private company's Advance Publication. In terms of priority, INTELSAT and Inmarsat are subject to the same ITU regulations and standards applicable to all other operators. In any event, the slots now used by INTELSAT and Inmarsat -- like the satellites that fill them -- are optimized for the provision of transoceanic service, not U.S. domestic service.

Myth: COMSAT has the ability "to raise financing at rates not available to the private sector."[63]

Fact: COMSAT must raise its capital in the same capital markets as any other private firm. Indeed, the FCC exercises far greater supervision over COMSAT's capital structure than any other firm in the market.

Myth: COMSAT enjoys "landing rights" advantages.

Fact: COMSAT has no such advantages. In the case of INTELSAT services, COMSAT merely provides half-circuits at the U.S. end of a transmission. The customer is ultimately responsible for arrangements at the foreign end of the communication. Thus, COMSAT has no "landing rights" at all.

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[62] The FCC provides the Advance Publication service for INTELSAT; Great Britain does so for Inmarsat.

[63] Orion Comments at 15, n.18.

In the case of Inmarsat services, IRIDIUM and Globalstar have large foreign investments, including from prime MSS target markets, and reports to date show great success in obtaining market access.[64]

Myth: COMSAT has an unfair competitive advantage in the form of more favorable access to spectrum.[65]

Fact: On the contrary, the same coordination obligations under the ITU apply to the Inmarsat and INTELSAT systems as to any other satellite system. The five-way L-band coordination among the United States, Mexico, Canada, Russia, and Inmarsat illustrates the point.

Myth: INTELSAT/Inmarsat have the power to block competition via the notification/consultation process.

Fact: With respect to INTELSAT, the Article XIV(d) consultation procedures with respect to economic harm have largely been phased out over the past several years.[66] The data submitted in the course of an Article XIV(d) technical coordination

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[64] COMSAT Comments at 17-18.

[65] *Id.*; Motorola Comments at 42.

[66] *Alpha Lyracom d/b/a Pan American Satellite Application for Modification of Licenses to Authorize International Private Line Service Interconnected to the Public Switched Networks*, 9 FCC Rcd. 1282, 1284 (1994) (discussing complete sunset to occur just a few months hence, and no later than January 1997). Moreover, these procedures have never required the disclosure of any potentially sensitive and proprietary business information. It is INTELSAT and Inmarsat that, more often than not, are expected to disclose what would be sensitive and proprietary business information to their competitors through the public dissemination of internal

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is comparable to that which any satellite operator would have to provide in the context of ITU coordination activities. As for Inmarsat, Article 8 of the Inmarsat Convention has never been interpreted as imposing a requirement on parties not to use systems causing "significant economic harm" to Inmarsat; the provision has always been treated merely as a notification requirement. In recent years, an *a priori* finding of no significant economic harm has applied to all systems notified.

Other arguments -- such as that IGO systems, insofar as its Signatories are government entities, have unfair influence over matters such as standards setting, government monies, entry into exclusive markets, and discrimination in home markets -- are, quite simply, completely irrelevant to the issue at hand.[67] There is no showing by any party that these activities by foreign administrations, even if true, would have any effect on prices or competition in the U.S. domestic satellite market, or that attempts to "leverage" pressure by restricting COMSAT would lead to any changes.

Finally, ORBCOMM's argument that COMSAT's provision of domestic services should be conditioned on still "appropriate structural and/or non-structural safeguards" should be seen for the competition-forestalling tactic that it is.[68] As a

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[66](...continued)
documents; in addition, COMSAT is required to disclose INTELSAT's and Inmarsat's plans when it applies for FCC authority to participate in satellite procurement plans or to offer new services.

[67] *See* Motorola Comments at 11.

[68] In particular, ORBCOMM advocates burdens such as additional separate subsidiaries, disclosure obligations, and information access restrictions. ORBCOMM Comments at 7-8.

general matter, the Commission is well aware of the costs and inefficiencies arising from structural separation. COMSAT, in particular, is already required to operate under inefficient structural separation requirements, and ORBCOMM does nothing to explain how an additional layer of cumbersome regulation would achieve any purpose other than to shield incumbent firms, such as itself, from a new competitor.

III. ADOPTION OF THE EFFECT ON COMPETITION TEST IS NECESSARY TO ADVANCE THE U.S. GOVERNMENT'S GOALS FOR THE RESTRUCTURING OF INTELSAT AND INMARSAT

COMSAT's initial comments have shown that the U.S. goals for restructuring or privatizing INTELSAT and Inmarsat may be stymied by adoption of needless regulatory constraints on the provision of services by IGO affiliates, subsidiaries, or successors.[69] It is not surprising, therefore, that many of the incumbent service providers that have opposed the government's restructuring proposals now also call for

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[69] COMSAT Comments at 30-33. As discussed in footnote 53 of COMSAT's initial comments, ICO is not an affiliate of Inmarsat under the test adopted by the Commission for foreign carriers. *See Market Entry and Regulation of Foreign-Affiliated Entities*, 11 FCC Rcd. 3873, ¶ 78 (1995). Furthermore, the relationship between ICO and Inmarsat is the subject of a separate proceeding and thus is not properly an issue for debate here. *Accord* DIRECTV Comments at 14, n.20. Accordingly, COMSAT's comments on the appropriate approach to regulating IGO affiliates, subsidiaries, or successors does not apply to ICO. In Section IV, *infra*, COMSAT reiterates its call for adoption of the effect on competition test regulatory scheme best suited for all providers of global non-geostationary mobile satellite system service providers, including ICO.

absurdly complex and unnecessary regulatory schemes (often based on ill-defined fears that "ties" "may well predispose" foreign administrations to act in certain ways).[70]

It is important to understand, however, that COMSAT's provision of *domestic* services is quite different from, and unrelated to, the right of a restructured IGO to provide both domestic *and* international services. Therefore, COMSAT's entry into the domestic market is quite separate from issues concerning restructured IGO affiliates. The Commission should disregard efforts of some commenters to link these quite different issues.[71]

With respect to the U.S. goals for restructuring the IGOs, the need for adoption of a straightforward, pro-competitive *DISCO-II* policy is plain. The U.S. government is now engaged, together with COMSAT, in an effort to persuade other participants in the IGOs to accept the United States' vision for the future of INTELSAT and Inmarsat.

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[70] *See* TRW Comments at 21. It is apparent that certain commenters who urge the Commission to await privatization of the IGOs before allowing COMSAT domestic entry also oppose the U.S. government's restructuring goals -- and stand to gain the longer that COMSAT is sidelined from domestic competition. *See, e.g.*, PanAmSat Comments at 5-6; Orion Comments at 8; TRW Comments at 36; Motorola Comments at 41. While the substance (if any) of commenters' various objections is addressed in Section II.C, it is worth recognizing here that Orion's call for a "separate rule making" to consider the "complex" issues surrounding the future of COMSAT and the IGOs, Orion Comments at 12-13, is yet again another instance of rival service providers' attempts to use the Commission regulatory process to delay or forestall any changes that might affect their competitive positions.

[71] *See, e.g.*, TRW Comments at 18-24; AT&T Comments at 16-17; Lockheed Comments at 13-14. *See also infra* Section II.C for COMSAT's responses to unfounded claims that an IGO affiliate might "enjoy the benefits of its predecessor that could distort the satellite service market." Loral Comments at 27-28.

In general terms, that vision calls for a reduction in the scope of inter-governmental cooperative communication services and a willingness to bear the risks inherent in offering new services in a competitive environment. The U.S. government has made a specific proposal to restructure INTELSAT to achieve these ends.

If a decision in this proceeding were to have the effect of harming future IGO affiliates or successors even before they are born, the Commission would undermine, if not destroy, the U.S. government's efforts to win approval of its restructuring proposals. As COMSAT has explained, in order to achieve the U.S. policy goals for INTELSAT and Inmarsat, the Commission must reject two particular proposals raised in the *DISCO-II Notice*.

First, the Commission should repudiate any suggestion that existing authorizations to use INTELSAT or Inmarsat services may not transfer automatically to IGO affiliates.[72] Foreign participants in the IGOs would have no incentive to agree to U.S. restructuring proposals if the continued utilization of such important assets was put into question.[73] Moreover, the opposition of American customers to such a suggestion supplies strong evidence that a failure to provide for automatic transfer of

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[72] *Contra* AT&T Comments at 15-17 (arguing that "[t]ransfer of space segment from an IGO to an affiliate should require the earth station operator to request a license modification to reflect the transfer"); TRW Comments at 25-26; Columbia Comments at 22.

[73] Similarly, the Commission should reject calls to employ an ECO-Sat analysis to applications to use INTELSAT satellites that have been provisionally assigned to the future INTELSAT commercial sub. PanAmSat Comments at 5.

these authorizations would significantly disrupt customer services.[74] Such disruptions would serve no consumer or public interest purpose.

Second, the Commission should decline to adopt any additional, burdensome layer of FCC review concerning the inter-relationship between any restructured affiliate and INTELSAT or Inmarsat. The degree to which commercial affiliates of the IGOs will be created and separated -- through outside stock ownership requirements, initial public offerings and the like -- are already crucial elements of the United States' restructuring proposals that are now being debated in various international fora. These issues will be decided at the inter-governmental level, not at the U.S. agency level, and there is no need for further Commission involvement on the matter beyond the FCC's current role as part of the U.S. negotiating team.

Finally, while the Commission should not adopt an ECO-Sat regulatory scheme at all, there is certainly no reason for it to do so for IGO affiliates not yet in existence, particularly when doing so could jeopardize the U.S. government's restructuring initiatives. Rather, the "effect on competition" analysis best balances the U.S. government's foreign policy interests and domestic competition concerns.

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[74] Joint Broadcaster/Turner Comments at 18.

IV. THE CUMBERSOME AND UNNECESSARY "CRITICAL MASS" TEST IS ILL-SUITED FOR REGULATING GLOBAL NON-GEOSTATIONARY MOBILE SATELLITE SYSTEM SERVICES

Numerous commenters have pointed out the infirmities of the proposal for applying a "critical mass" test to non-U.S. providers offering mobile satellite system ("MSS") services.[75] Even those commenters who advocate highly restrictive treatment of COMSAT agree that MSS service is inherently global in nature.[76] For many customers, such a service "has value *precisely because* it can provide services around the globe" -- and thus "it is not possible to define competitive opportunities on a route-by-route basis."[77]

Other commenters agree with COMSAT that various efforts to devise some "critical mass" standard short of a full market-by-market analysis are similarly deficient. As shown by the attempts by some commenters to provide explicit definitions for the appropriate critical mass,[78] any standard is likely to be either fundamentally vague or so convoluted as to be unworkable.[79] Furthermore, by

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[75] *See* Loral Comments at 12-14; AirTouch Comments at 10; DIRECTV Comments at 13.

[76] Motorola Comments at 32.

[77] *Id.* at iii.

[78] *Id.* at 27; TRW Comments at 18.

[79] *Accord*, DIRECTV Comments at 13; Airtouch Comments at 7; ICO Comments at 24-28.

adopting a critical mass test, the FCC may create confusion as to which foreign nations should "go first" in deregulating their markets -- thus resulting in greater delays in opening foreign markets generally.[80]

A more fundamental criticism, however, has been raised by several providers of global MSS service, who explain that there is no need for a reciprocity test in this context. Loral, AirTouch, and ICO agree that global MSS providers share essentially the same internationally diffuse ownership structure encompassing partnerships with entities of various countries; AirTouch describes Big LEOs as akin to IGOs because, for both of them, "investors and 'home countries' are likely to be scattered around the world."[81] MSS operators, regardless of their home country, seek out international partners and service providers that will assist in securing authorizations in the nations the MSS operators hope to serve.[82] Thus, as Loral points out, private industry has had considerable success in "provid[ing] incentives for foreign administrations to open their markets to U.S.-licensed systems."[83] However, a "critical mass" or other

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[80] AirTouch Comments at 7.

[81] *Id.* at 4-6 (explaining that the global nature of MSS and costs of construction and operation have naturally led Big LEO systems to "attract capital from multiple global sources"); Loral Comments at 13-14; ICO Comments at 41. Indeed, there is an irony in treating systems such as Iridium as "U.S." when the great majority of its owners are foreign, and thus would likely have far greater influence on foreign administrations than COMSAT, which has virtually no foreign shareholders.

[82] ICO Comments at 7.

[83] Loral Comments at 13; *see also supra* note 35 (noting that Globalstar has obtained access to the markets of 92 nations). Such developments raise the obvious

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version of an ECO-Sat test could well undermine such partnerships, particularly if U.S. restrictions inspire other nations to impose retaliatory measures against U.S.-licensed systems.[84]

Rather than open the relatively few markets that still remain closed to U.S.-licensed MSS providers, the critical mass test appears more likely to "improperly . . . exclud[e] successful global satellite systems from the U.S. market and deny[ ] U.S. earth station operators the benefits of increased competition."[85] Given the similarities among global MSS providers and their documented success to date in obtaining access to foreign markets, there is no justification for imposing more onerous regulations on non-U.S. licensees than on U.S-licensed systems.[86] The facts in the record certainly provide no basis for adopting the critical mass proposals of ICO competitors that are

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[83](...continued)
question as to whether U.S. licensees face any real difficulties in gaining access to foreign markets, and calls into question their motivations for opposing the simple proposal that they inform the FCC of what nations they have received authorization from. *See, e.g*, Orion Comments at 10; Columbia Comments at 17-18. These companies show no reluctance to inform their shareholders of their success. Perhaps they do not want the Commission to learn that such firms have, in fact, been much more successful in obtaining foreign authorizations than they have led the Commission to believe. There is no reason why the separate systems and LEO operators should not have to update the FCC regularly on their foreign authorizations.

[84] Loral Comments at 14; ICO Comments at 16 (noting that proposal directly contradicts the United States' pro-competitive position in the WTO negotiations).

[85] DIRECTV Comments at 14.

[86] ICO Comments at 28-32 (raising issue of discrimination among similarly situated entities).

even more burdensome than any test outlined in the *DISCO-II Notice*.[87] Rather than establish such unnecessary and discriminatory restrictions, the Commission should simply apply the same effect on competition test to non-U.S. providers of global MSS that is appropriate when evaluating the entry of non-U.S. providers of other satellite services.

V. THE FCC SHOULD AFFORD SPACE SEGMENT PROVIDERS THE OPTION OF MAKING THE APPROPRIATE ENTRY SHOWING RATHER THAN IMPOSING THAT OBLIGATION ON EARTH STATION OPERATORS

The record provides good cause to expand the number of "procedural vehicles" that the Commission will use for regulating the entry of non-U.S. systems into the domestic marketplace. Even if the Commission determines that its proposal to use

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[87] The elaborate proposals of commenters such as Motorola and TRW are readily recognizable as attempts to use the regulatory process to fend off viable rivals rather than risk open competition in the marketplace. *See, e.g.*, Motorola Comments at 32-35 (proposing two-part critical mass test, including rebuttable presumption of critical mass if there are effective opportunities for U.S.-licensed MSS systems in 80 percent of the home markets of direct and indirect investors in the foreign system *and* access to 80 percent of the population of the home market countries of direct and indirect owners); TRW Comments at 19-20 (proposing critical mass test based on the national markets of foreign investors with any level of direct or indirect financial interests in the non-U.S. system; applications not to be granted unless U.S.-licensed MSS systems can serve 80 percent of total population of national markets of investors in the non-U.S. system).

Similarly, TMI's request that the Commission carve out a special market for "regional MSS" for TMI and AMSC should be recognized as just another example of incumbents seeking protection. TMI Comments at 7-8.

earth station licensing should be adopted, it should not so limit its procedural options.[88] COMSAT and other commenters have pointed out that space segment providers may be in a better position to provide much of the information that the Commission proposes to seek.[89] Moreover, as other commenters have shown, in many cases it would be a significant hardship for earth station operators to try to satisfy the proposed regulatory burden.[90] The Commission therefore should afford space segment providers the voluntary option of making the necessary "effect on competition" showing, where appropriate, and thus relieve applicants for earth station licenses of that task.

VI. THE RECORD IS DEVOID OF FACTS DEMONSTRATING A NEED TO IMPOSE U.S. TECHNICAL OR FINANCIAL STANDARDS ON NON-U.S. SYSTEMS

Commenters in the initial round of this proceeding have provided no valid technology-based justifications for imposing U.S. technical standards on non-U.S.

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[88] Of course, if the Commission determines within this proceeding that COMSAT may use its INTELSAT and Inmarsat capacity for domestic services, even the earth station licensing option would be rendered unnecessary.

[89] COMSAT Comments at 33-35; *accord* AT&T Comments at 8-9.

[90] *See* Joint Broadcasters/Turner Comments at 20 (noting that such a burden would frustrate international newsgathering efforts, particularly with respect to fast-breaking events). TRW would aggravate the matter by placing an impossible burden on earth station licensees to update the Commission on any *de jure* or *de facto* barriers to entry on foreign markets, a burden most earth station licensees would have no ability to meet. TRW Comments at 31-32.

satellite systems.[91] Those that support the Commission's proposals seem to have given the matter little thought -- beyond the obvious value they might enjoy by virtue of erecting roadblocks to deter the entry of non-U.S. service providers into the U.S. market.[92]

Many other commenters, including COMSAT, are on record in opposition to the proposal. These commenters almost uniformly characterize the imposition of U.S. technical rules on non-U.S. systems as an action tantamount to "re-licensing" foreign satellites, and many voice fears that such a restriction would provoke other nations to impose their own conflicting technical standards on U.S. systems seeking to provide service abroad.[93] As COMSAT and others have noted, the Commission's only legitimate concern in this regard is preventing interference -- a matter that is resolved through the ITU coordination process. Earth station applicants will demonstrate their own technical compliance, but there are no inter-system technical issues not resolved by other means.

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[91] Similarly, commenters provided no substantive grounds to support the Commission's proposal to impose U.S. financial standards on non-U.S. systems.

[92] *See, e.g.*, PanAmSat Comments at 4; Motorola Comments at 38.

[93] *See, e.g.*, TRW Comments at 8-9 (because the FCC would likely be forced to grant waivers or other exemptions from the rules on an *ad hoc* basis, there would be effectively no objective standards); DIRECTV Comments at 20-21; Comments of Columbia Communications Corporation, IB Docket No. 96-111, *et al.*, at 19 (filed July 15, 1996) ("Columbia Comments"); Comments of Keystone Communications Corporation, IB Docket No. 96-111, *et al.*, at 4 (filed July 15, 1996) ("Keystone Comments"); Comments of WorldCom, Inc., IB Docket No. 96-111, *et al.*, at 8-9 (filed July 15, 1996) ("WorldCom Comments")

No party disputed that INTELSAT technology is actually more efficient than U.S. technical requirements. In addition, the use of Inmarsat Standard-A terminals will be reduced as Inmarsat-3 spot beams are increasingly used. Moreover, COMSAT and Inmarsat are taking steps to improve the spectrum efficiency of Standard A,[94] and there is no reason to adopt some additional burdensome obligations.

VII. THE RECORD IS DEVOID OF FACTS DEMONSTRATING A NEED TO REQUIRE THE LICENSING OF RECEIVE-ONLY EARTH STATIONS

COMSAT and other commenters have pointed out that there is no logical basis for the Commission's proposal to retain any licensing requirements for receive-only ("r/o") earth stations.[95] By definition, r/o earth stations cause no interference because they operate only as passive reception devices. The Commission itself has conceded the point; in 1993, it proposed to eliminate licensing requirements for r/o earth stations used in conjunction with non-U.S. systems.

There is no reason to regulate r/o earth stations to avoid interference from foreign-licensed satellites.[96] Such interference issues are resolved through the ITU coordination process. There is no need for an additional layer of FCC regulation.

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[94] *See* Opposition of COMSAT Corporation to Petitions to Deny, FCC File No. 1281-DSE-PIL-96 E960327, at 17-19 (Aug. 8, 1996).

[95] *See, e.g.*, Keystone Comments at 6-7; WTCI Comments at 15-16.

[96] DIRECTV Comments at 24-25.

The record in this proceeding provides no justification for the Commission to reverse its policy other than its perceived need to retain control over such earth stations to preserve its regulatory hook over non-U.S.-licensed satellite systems.[97] In general, the U.S. has strongly advocated de-restricting the use and licensing of r/o earth stations. The European Union is fact has done exactly that.[98] If the Commission reverses its policy, what is to prevent other countries from doing the same? This would result in a closing, rather than an opening, of markets.

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[97] Certainly the COMSAT competitors who urge the Commission to readopt licensing requirements for earth stations that receive INTELSAT K or Intelnet I are motivated by self-interest. *See, e.g.*, PanAmSat Comments at 9; DIRECTV Comments at 24. At a minimum, the Commission should adhere to the existing waivers. In particular, DIRECTV is wrong in attempting to isolate video from other services provided via INTELSAT. INTELSAT was created to provide video as well as voice and data services, and there is no legitimate basis for characterizing video as any less of a core INTELSAT offering than voice or data.

[98] Council Directive of 29 October 1993 supplementing Directive 91/263/EEC in respect of satellite earth station equipment (93/97/EEC; OJL 290/01, 24.11.1993) and Commission Directive of 13 October 1994 amending Directive 88/301/EEC and Directive 90/388/EEC in particular with regard to satellite communications (94/46/EEC; OJL 268/15, 19.10.1994).

CONCLUSION

For the foregoing reasons, COMSAT urges the Commission to heed the facts in the record revealing the numerous deficiencies of the proposed ECO-Sat approach to regulating COMSAT's provision of domestic services via the INTELSAT and Inmarsat systems. The Commission should instead adopt the effect on competition test and, in reliance on this record, immediately authorize COMSAT to provide domestic services to U.S. customers using its INTELSAT and Inmarsat capacity.

Respectfully submitted,

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